



**The Comptroller General
of the United States**

Washington, D.C. 20548

Cummins

Decision

Matter of: A & A Associates
File: B-225069.2
Date: November 25, 1986

DIGEST

1. Protest that agency improperly awarded to firm which allegedly did not offer brand name component identified in specifications does not state valid basis of protest where RFP specification specifically permitted offers of items equivalent to the brand name component and stated that brand name was listed only to illustrate standard of quality level of item to be proposed by offerors.
2. Claim of possible patent infringement does not provide a basis for the General Accounting Office to object to an award since questions of patent infringement are not encompassed by GAO's bid protest function.

DECISION

A & A Associates, Inc. (A & A), protests the award of a contract to Thermal Equipment Corporation (Thermal) under request for proposals (RFP) No. F34650-86-R-0276, issued by the Department of the Air Force. The RFP solicited autoclave vessels for bonding and curing composite materials for aircraft. The specification required that the primary control system shall be "the Applied Polymer Technology Caps 310 System or a compatible and equivalent system" and further advised that the "Manufacturer listed indicate[s] a standard of quality level, that the system shall be constructed to."

We dismiss the protest without obtaining an agency report from the Air Force because it is clear on its face that the protest either fails to state a valid basis of protest or otherwise is not for our consideration. 4 C.F.R. § 21.3(f) (1986).

A & A alleges that Thermal is not supplying the APT 310 Caps System because it is a patented item and that A & A has been

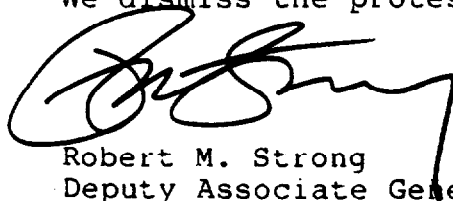
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advised by APT, the primary control system's manufacturer, that APT has not licensed Thermal to supply that system. A & A infers from this that Thermal improperly has been permitted to deviate from the specifications, an opportunity not provided to other offerors like A & A which could have offered less expensive systems. Alternatively, A & A argues that Thermal is offering the APT system without a license which allegedly constitutes a patent infringement.

We dismiss A & A's contention that the Air Force could not accept an offer of a system other than the brand name identified because it fails to state a valid basis of protest. The RFP specifications clearly permit offers of primary control systems compatible with and equivalent to the brand name system and indicates that the brand name was listed only to illustrate the standard of quality level the Air Force expects the contractor to provide. Thus, Thermal or any other offeror, including A & A, was not precluded from offering an equivalent control system under the RFP.

Finally, A & A's allegation that Thermal may have offered a system which infringes on APT's patents does not provide a basis for us to object to an award since questions of patent infringement are not encompassed by our bid protest function. Ridge, Inc., B-222481, 65 Comp. Gen. ___, June 24, 1986, 86-1 C.P.D. ¶ 583. --

We dismiss the protest.



Robert M. Strong
Deputy Associate General Counsel